

Before the **FEB 10 11 43 AM '98**
Federal Communications Commission
Washington, D.C. 20554
DISPATCHED

In the Matter of)

Application by BellSouth Corporation, *et al.*)
Pursuant to Section 271 of the)
Communications Act of 1934, as amended,)
To Provide In-Region, InterLATA Services)
In Louisiana)

CC Docket No. 97-231

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 1998

Released: February 4, 1998

By the Commission:

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I. INTRODUCTION

1. On November 6, 1997, BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. (collectively, BellSouth) filed an application for authorization under section 271 of the Communications Act of 1934, as amended,¹ to provide interLATA services in the State of Louisiana.² In many respects, the instant application is materially indistinguishable from BellSouth's application to provide interLATA services in South Carolina.³ As we recently determined, the BellSouth South Carolina application failed

¹ 47 U.S.C. § 271. Section 271 was added by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), *codified at* 47 U.S.C. § 151 *et seq.* We will refer to the Communications Act of 1934, as amended, as "the Communications Act" or "the Act." The Telecommunications Act of 1996 will be referred to as "the 1996 Act."

² *Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana*, CC Docket No. 97-231 (filed Nov. 6, 1997) (BellSouth Louisiana Application). *See Comments Requested on Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana*, Public Notice, DA 97-2330 (rel. Nov. 6, 1997). Unless an affidavit or appendix reference is included, all cites to the "BellSouth Louisiana Application" refer to BellSouth's "Brief in Support of Application." References to all affidavits or other sources contained in the appendices submitted by BellSouth are initially cited to the Appendix, Volume, and Tab number indicating the location of the source in the record. Subsequent citation to affidavits are cited by the affiant's name, e.g., "BellSouth Wright Aff." Comments on the current application are cited herein by party name, e.g., "ACSI Comments." Documents, such as affidavits and declarations, submitted by commenters are cited by the affiant's name and the entity submitting the affidavit, e.g., "AT&T Bradbury Aff.," "MCI King Decl." A list of parties that submitted comments or replies is set forth in the Appendix.

³ *Application by BellSouth Corp., BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208 (filed Sept. 30, 1997); *see also Comments Requested on Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and*

to demonstrate that BellSouth has fully implemented the competitive checklist in section 271(c)(2)(B).⁴ Applying the legal standard we adopted in the *BellSouth South Carolina Order* to what are materially indistinguishable facts with respect to two of the checklist items that BellSouth failed to meet in its South Carolina application, we are compelled to deny BellSouth's application to provide interLATA services in Louisiana. Specifically, we conclude that BellSouth has not demonstrated that it provides to competing carriers nondiscriminatory access to its operations support systems (OSS) functions.⁵ In addition, we conclude that BellSouth's refusal to offer contract service arrangements⁶ for resale at a wholesale discount violates the requirement in section 271(c)(2)(B)(xiv) that a Bell Operating Company (BOC) must make telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3) of the Act. We therefore deny BellSouth's Louisiana application.

II. OVERVIEW

2. We recently considered BellSouth's application for entry into the long distance market in South Carolina. In the *BellSouth South Carolina Order*, we determined that BellSouth had not fully implemented the competitive checklist, as required by section 271. We concluded, *inter alia*, that BellSouth failed to demonstrate that it offers nondiscriminatory access to its operations support systems.⁷ We also determined that BellSouth's refusal to make its contract service arrangements available for resale at a wholesale discount violates the requirement in checklist item (xiv) that it make telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3) of the Act.⁸

BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in South Carolina, Public Notice, DA 97-2112 (rel. Sept. 30, 1997).

⁴ *Application of BellSouth Corp. et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, FCC 97-418 (rel. Dec. 24, 1997) (*BellSouth South Carolina Order*).

⁵ Incumbent LECs, such as BellSouth, maintain a variety of computer databases and "back-office" systems that are used to provide service to customers. We collectively refer to these computer databases and systems as operations support systems, or OSS. These systems enable the employees of incumbent LECs to process customers' orders for telecommunications services, to provide the requested services to their customers, to maintain and repair network facilities, and to render bills. In order for competing carriers to provide these same services to their customers, the new entrants must have access to the incumbent LEC's systems. See Section IV.A., *infra*.

⁶ Contract service arrangements are contractual agreements made between a carrier and a specific, typically high-volume, customer, tailored to that customer's individual needs. See Section IV.B., *infra*.

⁷ *BellSouth South Carolina Order* at paras. 101-81.

⁸ *Id.* at paras. 215-24.

3. BellSouth's OSS are region-wide systems, deployed throughout BellSouth's nine-state region.⁹ We reviewed BellSouth's OSS in the *BellSouth South Carolina Order* and found that its OSS were deficient.¹⁰ Because our assessment of BellSouth's OSS in the *BellSouth South Carolina Order* applies to BellSouth's region-wide system as a whole, we use the determinations made in that Order as a starting point for our review of BellSouth's OSS in its Louisiana application and review any new data or information that BellSouth has provided to determine whether a different result is justified.

4. As discussed in further detail in Section IV.A. below, we have reviewed the new information BellSouth has provided and find that BellSouth has not remedied the deficiencies in its OSS that we identified in the *BellSouth South Carolina Order*. We note that BellSouth's application to provide in-region, interLATA services in Louisiana was filed on November 6, 1997, just 37 days after BellSouth filed its application to provide long distance service in South Carolina.¹¹ Although we commend BellSouth for continuing to improve its OSS functions during the 37-day interval, we find that the marginal improvements made during this short time do not address the major deficiencies we identified in our *BellSouth South Carolina Order*.

5. In addition, we conclude, as we did in the *BellSouth South Carolina Order*, that BellSouth's refusal to offer its contract service arrangements for resale at a wholesale discount is inconsistent with the requirement in section 271(c)(2)(B)(xiv) that it make telecommunications services available for resale in accordance with sections 251(c)(4) and 252(d)(3).¹² In this Order, we affirm our conclusion in the *BellSouth South Carolina Order* that neither incumbent LECs nor states may create a general exemption from the requirement that incumbent LECs offer their promotional or discounted offerings, including contract service arrangements, at a wholesale discount.

6. Finally, in light of our conclusion that BellSouth does not meet the competitive checklist, we need not and do not decide whether the Personal Communications Services (PCS) carriers on which BellSouth relies to satisfy the requirements of section 271(c)(1)(A)¹³ are "competing providers of telephone exchange service" in the State of Louisiana. In an effort to provide BellSouth and others with guidance on this issue for future applications, we

⁹ As discussed below in Section IV.A., BellSouth relies on data from its entire region to support its assertion that it complies with the requirements of section 271. See BellSouth Louisiana Application, App. A, Vol. 3a, Tab 9, Affidavit of W. Keith Milner (BellSouth Milner Aff.) at para. 5.

¹⁰ *BellSouth South Carolina Order* at paras. 101-81.

¹¹ BellSouth filed its application to provide in-region, interLATA services in South Carolina on September 30, 1997.

¹² See *BellSouth South Carolina Order* at paras. 215-24.

¹³ 47 U.S.C. § 271(c)(1)(A).

conclude in Section V, below, that section 271(c)(1)(A) excludes only cellular providers, not PCS providers, from being considered "facilities-based competitors." We also note, however, that the Commission has recently concluded in other contexts that, although PCS providers appear to be positioning their service offerings to become competitive with wireline service, they are still making the transition from a complementary service to a competitive equivalent to wireline services.¹⁴

III. BACKGROUND

A. Statutory Framework

7. The 1996 Act conditions BOC entry into in-region, interLATA services¹⁵ on compliance with certain provisions of section 271.¹⁶ Pursuant to section 271, BOCs must apply to this Commission for authorization to provide interLATA services originating in any in-region state.¹⁷ The Commission must issue a written determination on each application no later than 90 days after receiving such application.¹⁸ In acting on a BOC's application for authority to provide in-region, interLATA services, the Commission must consult with the Attorney General and give substantial weight to the Attorney General's evaluation of the

¹⁴ See Section V, *infra*.

¹⁵ We note here that, for the provision of international services, a U.S. carrier must obtain section 214 authority. See 47 U.S.C. § 214; see also *Streamlining the International Section 214 Authorization Process and Tariff Requirements*, Report and Order, 11 FCC Rcd 12884 (1996); *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, FCC 97-398 (rel. Nov. 26, 1997), *recon. pending*. This requirement to obtain a section 214 authorization will apply to a BOC even after it is authorized to provide in-region interLATA service. Several BOCs have applied for, and have obtained, section 214 authority to provide out-of-region international services. See, e.g., *NYNEX Long Distance Co., Ameritech Communications, Inc., Bell Atlantic Communications, Inc., Application for Authority Pursuant to Section 214 of the Communications Act, as Amended, to Provide International Services from Certain Parts of the United States to International Points through Resale of International Switched Services*, Order, Authorization and Certificate, 11 FCC Rcd 8685 (Int'l Bur. 1996). Several BOCs have applied for section 214 authority to provide in-region international services. See, e.g., *Bell Atlantic Communications, Inc. (BACI) and NYNEX Long Distance (NLD)*, File Nos. ITC-98-002, ITC-98-003, & ITC-98-004 (filed Dec. 23, 1997) (seeking section 214 authority for in-region international facilities-based and resale services); *Southwestern Bell Communications Services, Inc.*, File Nos. ITC-97-776 & ITC-97-777 (filed Dec. 5, 1997) (seeking section 214 authority for in-region international facilities-based and resale services).

¹⁶ We note that on December 31, 1997, the United States District Court for the Northern District of Texas held that sections 271-275 of the Act are a bill of attainder and thus are unconstitutional as to SBC Corporation and U S WEST. *SBC Communications, Inc. v. Federal Communications Comm'n*, No. 7:97-CV-163-X, 1997 WL 800662 (N.D. Tex. Dec. 31, 1997) (*SBC v. FCC*) (ruling subsequently extended to Bell Atlantic), *request for stay pending*.

¹⁷ 47 U.S.C. § 271(d)(1).

¹⁸ *Id.* § 271(d)(3).

BOC's application.¹⁹ In addition, the Commission must consult with the applicable state commission to verify that the BOC has one or more state-approved interconnection agreements with a facilities-based competitor, as required in section 271(c)(1)(A),²⁰ or a statement of generally available terms and conditions (SGAT), as required in section 271(c)(1)(B),²¹ and that either the agreement(s) or general statement satisfy the "competitive checklist."²²

8. To obtain authorization to provide in-region, interLATA service under section 271, the BOC must show that: (1) it satisfies the requirements of either section 271(c)(1)(A), known as "Track A," or 271(c)(1)(B), known as "Track B;" (2) it has "fully implemented the competitive checklist" or the statements approved at the state level under section 252 satisfy the competitive checklist contained in section 271(c)(2)(B);²³ (3) the requested authorization will be carried out in accordance with the requirements of section 272;²⁴ and (4) the BOC's entry into the in-region, interLATA market is "consistent with the public interest, convenience, and necessity."²⁵

B. State Verification of BOC Compliance with Section 271(c)

9. Under section 271(d)(2)(B), the Commission "shall consult with the State commission of any State that is the subject of the application in order to verify the compliance of the Bell operating company with the requirements of subsection (c)."²⁶ In the

¹⁹ *Id.* § 271(d)(2)(A).

²⁰ *Id.* § 271(c)(1)(A).

²¹ *Id.* § 271(c)(1)(B).

²² *Id.* § 271(d)(2)(B).

²³ *Id.* § 271(c)(2)(B). The critical, market-opening provisions of section 251 are incorporated into the competitive checklist found in section 271. 47 U.S.C. § 251; see also *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition Order*), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997) and *Iowa Utilities Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *petition for cert. granted*, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively, *Iowa Utils. Bd. v. FCC*), Order on Reconsideration, 11 FCC Rcd 13042 (1996), Second Order on Reconsideration, 11 FCC Rcd 19738 (1996), Third Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending*.

²⁴ 47 U.S.C. § 271(d)(3)(B).

²⁵ *Id.* § 271(d)(3)(C).

²⁶ *Id.* § 271(d)(2)(B). Subsection (c)(1) defines the requirements for Track A or Track B entry, and subsection (c)(2) contains the competitive checklist.

Ameritech Michigan Order, the Commission determined that, because the Act does not prescribe any standard for Commission consideration of a state commission's verification under section 271(d)(2)(B), it has discretion in each section 271 proceeding to determine the amount of deference to accord to the state commission's consultation, in light of the nature and extent of the state commission's proceedings on the applicant's compliance with section 271 and the status of local competition.²⁷ Although the Commission will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the Commission's role to determine whether the factual record supports a conclusion that particular requirements of section 271 have been met.²⁸

1. The Louisiana Commission's 271 Proceeding

10. The Louisiana Commission reviewed BellSouth's compliance with the requirements of section 271 and provided us with its written evaluation. On December 18, 1996,²⁹ the Louisiana Commission commenced a proceeding to consider BellSouth's compliance with section 271 of the Act.³⁰ Pursuant to the procedural schedule established in the proceeding, parties filed testimony and conducted discovery. The Louisiana Commission conducted a public hearing in May 1997, during which BellSouth and parties opposed to BellSouth's entry into the long distance market presented testimony and conducted cross-examinations.³¹ The Louisiana Commission broadened the scope of the *Louisiana Section 271*

²⁷ *Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Michigan*, CC Docket No. 97-137, Memorandum Opinion and Order, FCC 97-298 (rel. Aug. 19, 1997) (*Ameritech Michigan Order*) at para. 30, writ of mandamus issued sub nom. *Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998).

²⁸ *Id.*

²⁹ See BellSouth Louisiana Application, App. C-1, Vol. 1, Tab 1, Complete Transcript of the December 18, 1996 Open Session of the Louisiana Public Service Commission at 124-125.

³⁰ Louisiana Public Service Commission, *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252 (*Louisiana Section 271 Proceeding*).

³¹ See BellSouth Louisiana Application, App. C-1, Vols. 5a-b, 6-10, Tabs 63-65, 67-68, 70-71, Hearing Transcript: Volumes I-VII (May 19-23, 1997, May 27-28, 1997). According to BellSouth, the state commission adduced evidence, evaluated the credibility of witnesses who were subjected to cross examination under oath, and reached conclusions based on a nearly 6,200-page record that included over 3,800 pages of testimony. BellSouth Louisiana Application at 3, BellSouth Louisiana Reply at 4.

Proceeding to encompass specific consideration of BellSouth's SGAT.³² Following the hearings, parties and the Louisiana Commission staff filed post-hearing briefs.³³

11. On September 5, 1997, by a vote of three-to-two, the Louisiana Commission approved BellSouth's SGAT, subject to modifications, and concluded that BellSouth's SGAT makes available to new entrants each of the items in the competitive checklist.³⁴ The Louisiana Commission also found that BellSouth's entry into the interLATA market would create the potential for immediate rate reductions for long-distance services and would, therefore, serve the public interest.³⁵ BellSouth modified its SGAT to comply with

³² See BellSouth Louisiana Application, App. C-1, Vol. 6, Tab 66, *Notice of Commission Consideration of BellSouth Telecommunications, Inc.'s Statement of Generally Available Terms Within This Docket*, Docket No. U-22252 (May 22, 1997). In its May 30, 1997 Official Bulletin, the Louisiana Commission published notice of the broadened scope of the *Louisiana Section 271 Proceeding* to provide those not already a party to the proceeding with an opportunity to participate in the Louisiana Commission's consideration of BellSouth's SGAT. Although several new parties intervened at this point in the proceeding and some submitted comments, none responded to the state commission's offer of additional hearing dates. Louisiana Commission Comments at 4-5.

³³ See, e.g., BellSouth Louisiana Application, App. C-1, Vol. 11, Tab 94, Post-Hearing Memorandum of MCI Telecommunications Corporation, Docket No. U-22252 (June 18, 1997); BellSouth Louisiana Application, App. C-1, Vol. 11, Tab 96, AT&T Communications of the South Central States, Inc.'s Post-Hearing Brief in Opposition to Approval of BellSouth's Statement of Generally Available Terms and Conditions, and in Opposition to BellSouth's Request for a Recommendation of Preapplication Compliance with § 271 to Provide InterLATA Services Originating In-Region, Docket No. U-22252 (June 18, 1997); BellSouth Louisiana Application, App. C-1, Vol. 11, Tab 99, Post-Hearing Brief of WorldCom, Inc., Docket No. U-22252 (June 18, 1997); BellSouth Louisiana Application, Appendix C-1, Vol. 11, Tab 98, *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252, Louisiana Public Service Commission Staff Post Hearing Brief, (June 18, 1997).

³⁴ BellSouth Louisiana Application, App. C-1, Vol. 13, Tab 136, *In re: Consideration and Review of BellSouth Telecommunications, Inc.'s Preapplication Compliance with Section 271 of the Telecommunications Act of 1996, Including But Not Limited to the Fourteen Requirements Set Forth in Section 271(c)(2)(B) in Order to Verify Compliance with Section 271 and Provide a Recommendation to the Federal Communications Commission Regarding BellSouth Telecommunications, Inc.'s Application to Provide InterLATA Services Originating In-Region*, Docket No. U-22252, Order U-22252-A (decided Aug. 20, 1997, issued Sept. 5, 1997) (*Louisiana Commission 271 Compliance Order*). The dissenting commissioners proposed a motion that would grant the Louisiana Commission an additional 60 days to review BellSouth's SGAT in order to complete its cost docket, analyze the implications of the Eighth Circuit's decision in *Iowa Utils. Bd. v. FCC* and the Commission's *Ameritech Michigan Order*, and allow BellSouth to improve its OSS, particularly in the area of capacity. BellSouth Louisiana Application, App. C-1, Vol. 13, Tab 135, *Partial Minutes of August 20, 1997 Open Session of the Louisiana Public Service Commission* (Aug. 20, 1997) at 2-4.

³⁵ *Louisiana Commission 271 Compliance Order* at 14. See also Louisiana Commission Comments at 19-20.

modifications ordered in the *Louisiana Commission 271 Compliance Order* and filed a revised SGAT on September 9, 1997.³⁶

12. On November 24, 1997, the Louisiana Commission submitted its comments to this Commission concerning BellSouth's Louisiana application. In its comments, the Louisiana Commission reiterated its view that BellSouth should be granted interLATA authority, because it has satisfied the requirements of section 271. We note that, although the Louisiana Commission has addressed every checklist item, it has not included an analysis of the state of local competition in Louisiana, as the Commission has encouraged state commissions to perform.³⁷

2. The Louisiana Commission's Cost Proceedings

13. In addition to its *Section 271 Proceeding*, the Louisiana Commission also conducted extensive proceedings to establish cost-based rates for interconnection and unbundled network elements pursuant to section 252(d)(1). The Louisiana Commission's consolidated cost proceeding commenced in 1996 upon BellSouth's filing of a tariff introducing rates, terms, and conditions for interconnection and unbundled network elements and supporting cost studies for the tariff.³⁸ Pursuant to a revised procedural schedule established in July 1997, parties conducted discovery; AT&T and MCI filed revised cost studies; BellSouth, AT&T, and MCI conducted tutorials regarding their cost studies; and intervenors filed testimony and rebuttal testimony.³⁹ The Louisiana Commission conducted nine days of hearings in September 1997, during which 34 witnesses and the Louisiana Commission staff testified and conducted cross-examinations.⁴⁰

³⁶ BellSouth Louisiana Application, App. C-1, Vol. 13, Tab 137, *Statement of Generally Available Terms and Conditions for Interconnection, Unbundling, and Resale Provided by BellSouth Telecommunications, Inc. in the State of Louisiana, as Modified by Louisiana Public Service Commission Order No. 22252-A* (Sept. 9, 1997) (SGAT). Unless otherwise expressly noted, all references herein to the BellSouth SGAT refer to the September 9, 1997, revised SGAT.

³⁷ See *Ameritech Michigan Order* at para. 34 (suggesting that state commissions, in future proceedings, develop a record concerning the state of local competition as part of their consultation).

³⁸ Louisiana Commission Comments at 21. BellSouth filed its tariff on April 1, 1996, and supporting cost studies on June 25, 1996. *Id.* On October 30, 1996, the Louisiana Commission consolidated these two pending cost proceedings. See BellSouth Louisiana Application, App. C-3, Vol. 25, Tab 210, *Notice of Consolidation of Proceedings*, Docket. Nos. U-22022, U-22093 (Oct. 30, 1996).

³⁹ See Louisiana Commission Comments at 23.

⁴⁰ See *id.* at 23-24; see also BellSouth Louisiana Application, App. C-3, Vols. 28-34, Tabs 265-73, *In the Matter of: Louisiana Public Service Commission Docket No. U-22022 and U-22093*, Hearing Transcript: Volumes 1-9 (Sept. 8-12, 1997; Sept. 15-17, 1997; Sept. 24, 1997).

14. On October 17, 1997, following the filing of post-hearing briefs by the parties and the Louisiana Commission staff, and the issuance of a recommendation by the Chief Administrative Law Judge, the Louisiana Commission adopted rates that, in its view, are based on a forward-looking, long-run, incremental cost methodology, as proposed by the Louisiana Commission's independent consultant.⁴¹ The Louisiana Commission ordered BellSouth to replace the interim rates in its SGAT with the permanent rates established in the *Louisiana Commission Pricing Order*. BellSouth incorporated into its SGAT the rates established by the Louisiana Commission in its costing proceeding.⁴²

15. The Louisiana Commission also conducted a proceeding to establish the wholesale discount for services offered for resale pursuant to section 252(d)(3). Pursuant to the procedural schedule established in the proceeding, parties reviewed BellSouth's resale cost study,⁴³ filed testimony, and conducted discovery. Hearings were held on this issue in September 1996.⁴⁴ On October 16, 1996, the Louisiana Commission adopted a wholesale

⁴¹ BellSouth Louisiana Application, Appendix C-3, Vol. 34, Tab 285, *In re: Review and Consideration of BellSouth Telecommunications, Inc.'s TSLRIC and LRIC Cost Studies Submitted Pursuant to Sections 901(C) and 1001(E) of the Regulations for Competition in the Local Telecommunications Market as Adopted by General Order Dated March 15, 1996 in Order to Determine the Cost of Interconnection Services and Unbundled Network Components to Establish Reasonable, Non-Discriminatory, Cost-Based Tariffed Rates; and In Re: Review and Consideration of BellSouth Telecommunications, Inc.'s Tariff Filing of April 1, 1996, Filed Pursuant to Section 901 and 1001 of the Regulations for Competition in the Local Telecommunications Market, Which Tariff Introduces Interconnection and Unbundled Services and Establishes the Rates, Terms, and Conditions for Such Service Offerings*, Docket Nos. U-22022/U-22093, Order No. U-22022/22093-A (Consolidated) (decided Oct. 22, 1997, issued Oct. 24, 1997) (*Louisiana Commission Pricing Order*).

⁴² Louisiana Commission Comments at 27.

⁴³ BellSouth Louisiana Application, App. C-4, Vol. 35, Tab 286, BellSouth Telecommunications, Inc. Cost Study Documentation (June 17, 1996).

⁴⁴ BellSouth Louisiana Application, Appendix C-4, Vols. 36-37, Tabs 307-309, *Review and Consideration of BellSouth Telecommunications, Inc. Resale Cost Study Submitted Pursuant to Section 1101(D) of the Regulations For Competition in the Local Market as Adopted by General Order Dated March 15, 1996, in order to Determine the Wholesale Resale Rates for Unbundled Retail Features, Functions, Capabilities, and Services, and Bundled Retail Services Including Vertical Features, as Provided under Section 1001(D)*, Docket No. U-22020, Hearing Transcripts: Volumes 1-3 (Sept. 16-18, 1996).

discount of 20.72 percent.⁴⁵ BellSouth incorporated into its SGAT the 20.72 percent wholesale discount established by the Louisiana Commission.⁴⁶

C. The Department of Justice's Evaluation

16. Section 271(d)(2)(A) requires the Commission to consult with the Attorney General before making any determination approving or denying a section 271 application.⁴⁷ The Attorney General is entitled to evaluate the application "using any standard the Attorney General considers appropriate."⁴⁸ and the Commission is required to "give substantial weight to the Attorney General's evaluation."⁴⁹ Section 271(d)(2)(A) specifically provides, however, that "such evaluation shall not have any preclusive effect on any Commission decision."⁵⁰ We found in the *Ameritech Michigan Order* that the Commission is required to give substantial weight not only to the Department of Justice's evaluation of the effect of BOC entry on long distance competition, but also to its evaluation of each of the criteria for BOC entry under section 271.⁵¹

17. The Department of Justice recommends that BellSouth's application for entry into the long distance market in Louisiana be denied.⁵² As summarized more fully below, the Department of Justice concluded that the Louisiana market is not fully and irreversibly open to competition, and that BellSouth has failed to demonstrate that it is offering access and interconnection that satisfy the requirements of the competitive checklist.

⁴⁵ BellSouth Louisiana Application, App. C-4, Vol. 38, Tab 329, *In re: Review and Consideration of BellSouth Telecommunications, Inc. Resale Cost Study Submitted Pursuant to Section 1101(D) of the Regulations For Competition in the Local Market as Adopted by General Order Dated March 15, 1996, in order to Determine the Wholesale Resale Rates for Unbundled Retail Features, Functions, Capabilities, and Services, and Bundled Retail Services Including Vertical Features, as Provided under Section 1001(D)*, Docket No. U-22020, Order No. U-22020 (decided Oct. 16, 1996, issued Nov. 12, 1996) (*Louisiana Commission Resale Order*) at 15.

⁴⁶ See BellSouth SGAT § XIV.B. and Att. H.

⁴⁷ 47 U.S.C. § 271(d)(2)(A).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Ameritech Michigan Order* at para. 37.

⁵² DOJ Louisiana Evaluation at iii.

18. Evaluation of Openness of Market to Competition. The Department of Justice found that the Louisiana local market is not "fully and irreversibly open to competition."⁵³ In evaluating whether competition in a local market satisfies this standard, the Department of Justice considers whether all three entry paths contemplated by the 1996 Act -- facilities-based entry involving construction of new networks, the use of unbundled network elements, and resale of the BOC's services -- are fully and irreversibly open to competition to serve both business and residential consumers.⁵⁴ The Department of Justice examines the extent of actual local competition, whether significant barriers continue to impede the growth of competition, and whether benchmarks to prevent backsliding have been established.⁵⁵ Applying these standards, the Department of Justice concluded that BellSouth faces no significant competition in local exchange service in Louisiana.⁵⁶ The Department of Justice further found that the Louisiana market is not sufficiently open to competition because BellSouth has not instituted performance measurements to ensure consistent wholesale performance, *i.e.*, to prevent "backsliding" once section 271 authority is granted.⁵⁷ In light of its conclusion that the Louisiana market is not "fully and irreversibly open to competition," the Department of Justice found that it is not in the public interest to grant BellSouth's application.⁵⁸

19. Evaluation of Compliance with Competitive Checklist. The Department of Justice concluded that BellSouth has failed to demonstrate that it is offering access and interconnection that satisfy the competitive checklist requirements. The Department of Justice reaffirmed the conclusions it made in its South Carolina evaluation that, *inter alia*, BellSouth has not demonstrated its ability to provide adequate, nondiscriminatory access to its operations support systems.⁵⁹ The Department of Justice discounted the Louisiana Commission's determination that BellSouth's OSS satisfy the checklist, because that determination: (1) was not based on this Commission's approach for assessing checklist compliance; (2) did not articulate the reasoning for the Louisiana Commission's conclusion; and (3) appears to have

⁵³ *Id.* at 20-34. The Department of Justice first adopted the "fully and irreversibly open to competition" standard in its evaluation of SBC's section 271 application for Oklahoma. *Application by SBC Communications Inc. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Oklahoma*, CC Docket No. 97-121, Memorandum Opinion and Order, 12 FCC Rcd 8685 (1997).

⁵⁴ DOJ Louisiana Evaluation at 2.

⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

⁵⁷ *Id.* at 31-33.

⁵⁸ *Id.* at 33-35.

⁵⁹ *Id.* at 17.

been based on a technical demonstration of BellSouth's OSS instead of a thorough test.⁶⁰ The Department of Justice also noted that other states -- such as Florida, Georgia, and Alabama -- have concluded that BellSouth's region-wide OSS are insufficient.⁶¹

IV. CHECKLIST COMPLIANCE

A. Operations Support Systems

1. Background

20. Congress requires incumbent LECs to share their networks with new entrants to hasten the development of competition in the local exchange market.⁶² In order for a new entrant to have access to an incumbent LEC's network, the Commission has required that incumbent LECs offer nondiscriminatory access to the systems, information, and personnel that support those network elements or services.⁶³ These systems, databases, and personnel are commonly referred to, collectively, as operations support systems, or OSS.⁶⁴ Properly functioning operations support systems allow a carrier to receive, process, and install customers' orders promptly and accurately. To ensure that all carriers are able to compete fairly for customers, the Commission has consistently emphasized that the incumbent LEC must give its competitors nondiscriminatory access to the functions of its operations support systems.⁶⁵ More simply put, new entrants must be able to provide service to their customers at a level that matches the quality of the service provided by the incumbent LEC. Because the incumbent LEC owns and controls its operational support systems, competing carriers'

⁶⁰ *Id.* at 18-19.

⁶¹ *Id.* at 19.

⁶² See *BellSouth South Carolina Order* at para. 82; see also *Ameritech Michigan Order* at para. 13; *Iowa Utils. Bd.*, 120 F.3d at 816 ("Congress clearly included measures in the Act, such as the interconnection, unbundled access, and resale provisions, in order to expedite the introduction of pervasive competition into the local telecommunications industry").

⁶³ *Local Competition Order*, 11 FCC Rcd at 15499, 15767; *BellSouth South Carolina Order* at para. 82.

⁶⁴ See *Ameritech Michigan Order* at para. 129; *BellSouth South Carolina Order* at para. 82. We note that the Department of Justice, in its evaluation, uses the term "wholesale support processes," which it defines as "the automated and manual processes required to make resale services and unbundled elements, among other items, meaningfully available to competitors." DOJ Louisiana Evaluation, Ex. 4 at 1. We believe the terms "operations support systems," as used by the Commission, and "wholesale support processes," as used by the Department of Justice, are the same. See *Ameritech Michigan Order* at para. 129, n.315; *BellSouth South Carolina Order* at para. 82, n.234.

⁶⁵ *Ameritech Michigan Order* at paras. 129-30; see also *Local Competition Order*, 11 FCC Rcd at 15763; *Iowa Utilities Board v. FCC*, 11 FCC Rcd at 10741, 42; *BellSouth South Carolina Order* at

entry into the local market depends upon the incumbent LEC's willingness and ability to make its OSS available in a nondiscriminatory manner. A competing carrier that lacks access to operations support systems equivalent to those the incumbent LEC provides to itself, its affiliates, or its customers, "will be severely disadvantaged, if not precluded altogether, from fairly competing" in the local exchange market.⁶⁶

2. Discussion

21. In the *BellSouth South Carolina Order*, this Commission concluded that BellSouth failed to offer nondiscriminatory access to its OSS functions to competing carriers.⁶⁷ BellSouth has deployed the same operations support systems throughout its nine-state region,⁶⁸ and, in its application, BellSouth relies on data from its entire region to support its assertion that it is in compliance with the requirements of section 271.⁶⁹ We use the determinations we made about BellSouth's operations support systems in our *BellSouth South Carolina Order* as a starting point. We then review any new data or information that BellSouth has provided in the context of its Louisiana application and decide whether the new information justifies a different result.

22. We find in this proceeding, as we did in the *BellSouth South Carolina Order*, that BellSouth's operations support systems fail to offer nondiscriminatory access to OSS functions for the pre-ordering, ordering,⁷⁰ and provisioning⁷¹ of resale services. During the 37-day interval between the two applications, BellSouth continued to improve its operations support systems. We commend BellSouth for these efforts. We agree with the Department of

⁶⁶ *Local Competition Order*, 11 FCC Rcd at 15763-64; *BellSouth South Carolina Order* at para. 82.

⁶⁷ See *BellSouth South Carolina Order* at paras. 101-69.

⁶⁸ BellSouth states that it "uses the same processes with respect to checklist items in all of its nine states" BellSouth Louisiana Application at 39; see *BellSouth South Carolina Order* at para. 100; Hyperion Comments at 9; KMC Comments at 11; WorldCom Comments at 17; LCI Comments, Decl. 2, Declaration of Albert D. Witbrodt (LCI Witbrodt Decl.) at para. 2. We note that several states have examined BellSouth's operational support systems. In particular, the Alabama, Florida, and Georgia Commissions identified deficiencies with BellSouth's operational support systems. *BellSouth South Carolina Order* at para. 100; see ALTS Reply Comments at 7; Hyperion Comments at 8-9; WorldCom Comments at 16-17.

⁶⁹ BellSouth Louisiana Application, App. A, Vol. 4a, Tab 12, Affidavit of William N. Stacy (BellSouth Stacy OSS Aff.), Exs. WNS-38, WNS-41; BellSouth Louisiana Application, App. A, Vol. 5, Tab 12, Affidavit of William N. Stacy (BellSouth Stacy Perf. Aff.) at para. 42, Exs. WNS-9, WNS-11, WNS-12.

⁷⁰ Pre-ordering and ordering include the exchange of information necessary for a competing carrier to order services and products from the BOC. See 47 C.F.R. § 51.5.

⁷¹ Provisioning includes those activities necessary to install services and products to the competing carrier and its customers as well as the exchange of information necessary to inform competing carriers of the status of that work. See 47 C.F.R. § 51.5.

Justice and the majority of commenters, however, that the marginal improvements that BellSouth made during this short time do not address the major deficiencies of BellSouth's operations support systems, *i.e.*, that competing carriers do not have access to the basic functionalities at parity with BellSouth's own retail operations.⁷² We identified these same deficiencies in the *BellSouth South Carolina Order*. BellSouth's deficiencies with respect to its operational support systems preclude competing carriers from being able to compete fairly with BellSouth and render it noncompliant with the competitive checklist.

a. Ordering and Provisioning Functions

23. For the reasons stated below, we conclude that BellSouth has failed to remedy the problems with its ordering and provisioning functions that we identified in our *BellSouth South Carolina Order*. In the *BellSouth South Carolina Order*, we concluded that BellSouth failed to establish that it is providing nondiscriminatory access for the ordering and provisioning of resale services because, among other things, (1) evidence in the record shows that a significant number of orders submitted by competing carriers via BellSouth's electronic interface are rejected, resulting in substantial delays in processing new entrants' orders, and (2) BellSouth fails to provide competing carriers with information on the status of their orders in a timely manner.⁷³ In the *BellSouth South Carolina Order*, we concluded that these deficiencies were significant and prevented competing carriers from providing service to their customers at parity with BellSouth's retail operations.⁷⁴ Moreover, in the *BellSouth South Carolina Order*, we found that BellSouth failed to provide us with data establishing that it is offering nondiscriminatory access to the various operational support systems so that a competing carrier could provide service to its customers in substantially the same time and manner that BellSouth provides such service to its own retail customers.⁷⁵ Each of these deficiencies is discussed in more detail below.

(i) Order Rejections

24. We conclude here, as we did in our *BellSouth South Carolina Order*, that BellSouth has failed to demonstrate that it is offering competing carriers the ability to order services for resale on a nondiscriminatory basis, *i.e.*, within substantially the same time and

⁷² DOJ Louisiana Evaluation at 4, 20; *see* AT&T Comments, App. L, Vol. VII, Affidavit of Michael Pfau (AT&T Pfau Aff.) at para. 19; MCI Comments, Ex. C, Supplemental Declaration of Samuel L. King (MCI King Supp. Decl.) at paras. 2-3; AT&T Reply Comments at 20.

⁷³ *BellSouth South Carolina Order* at paras. 101-31.

⁷⁴ *Id.* at para. 103.

⁷⁵ *Id.* at paras. 132-40.

manner as the BOC provides the service to itself.⁷⁶ BellSouth claims that competing carriers' access to its ordering functions is "substantially the same as the access provided to BellSouth's own retail operations."⁷⁷ But the data show that when BellSouth representatives place an order, over 97 percent of BellSouth's residential orders and 81 percent of its business orders electronically flow through BellSouth's ordering systems and databases.⁷⁸ In contrast, when competing carriers place an order, a significant percentage of their orders are rejected, and thus require manual intervention before the order can be processed. For example, in July 1997, only 25 percent of competing carriers' resale orders submitted through the Electronic Data Interchange (EDI) flowed through BellSouth's system.⁷⁹ In August 1997, the flow-through rate was 40 percent,⁸⁰ and in September 1997, the flow-through rate was 54 percent.⁸¹

⁷⁶ *Id.* at paras. 104-14.

⁷⁷ BellSouth Louisiana Application at 31.

⁷⁸ DOJ Louisiana Evaluation, Ex. 4 at A-22; *see also* BellSouth Reply Comments, App., Tab 11, Affidavit of William N. Stacy (BellSouth Stacy Reply OSS Aff.) at para. 54. An order "flows through" BellSouth's ordering and provisioning systems when it is processed through those systems without additional human intervention. Rejected orders are those orders that do not flow through BellSouth's ordering and provisioning systems. Orders are rejected or "drop out" from electronic processing for a number of reasons, such as missing information, incorrect information, incorrect ordering codes, *etc.* Order flow-through rates can also be expressed as order rejection rates. For example, if the order flow-through rate is 25 percent, the order rejection rate is 75 percent.

⁷⁹ BellSouth Stacy OSS Aff., Exs. WNS-38, WNS-41; *BellSouth South Carolina Order* at para. 105. BellSouth claims that it is providing nondiscriminatory access for ordering using the Electronic Data Interchange (EDI) interface. Hence, we only considered orders submitted via the EDI interface. BellSouth Stacy OSS Aff. at para. 46. These percentages were determined by separating the EDI orders from all orders, using Stacy OSS Aff. Exs. WNS-38 and WNS-41. EDI has been adopted by the Ordering and Billing Forum (OBF) of the Alliance for Telecommunications Industry Solutions (ATIS) as the industry standard for the ordering and provisioning of resale services. *See* Transcript of Forum on Operations Support Systems for Unbundled Network Elements and Resale Services in Docket No. 96-98 (May 28-29, 1997), Ordering and Billing Forum Attachment, "Overview: Industry Guidelines for Operations Support Systems Functions." BellSouth provides an electronic interface utilizing the EDI protocol to provide access to competing carriers for ordering and provisioning of resold services. The EDI protocol enables BellSouth both to receive resale orders electronically from competing carriers and to transmit information to competing carriers concerning the status of their orders. BellSouth's EDI interface supports electronic ordering for 34 resale services. BellSouth Stacy OSS Aff. at para. 67; Ex. WNS-27.

⁸⁰ Stacy OSS Aff., Exs. WNS-38, WNS-41; *BellSouth South Carolina Order* at para. 105. The July and August data were the basis for our finding in the *BellSouth South Carolina Order* that BellSouth was not providing competing carriers with nondiscriminatory access to its ordering and provisioning systems. *BellSouth South Carolina Order* at paras. 104-07.

⁸¹ Stacy OSS Aff., Exs. WNS-38, WNS-41. The order flow-through rates for all electronic "local service requests," were 25 percent for July 1997, 34 percent for August 1997, and 39 percent for September 1997. On reply, BellSouth claims that the order flow-through rate was 45 percent for November 1997. BellSouth Stacy Reply OSS Aff. at para. 54. BellSouth did not include such data for the month of October 1997.

25. While we note that improvements in new entrants' flow-through rates have occurred, we conclude that the substantial differences between these rates and the flow-through rate that BellSouth experiences for its own orders impose a significant competitive disadvantage on new entrants. When orders do not flow through BellSouth's ordering and provisioning systems, they are rejected and sent to one of BellSouth's Local Carrier Service Centers (service centers) for manual processing.⁸² It is virtually impossible for orders that are processed manually to be completed in the same amount of time as orders that flow through electronically.⁸³ Therefore, it is difficult for equivalent access to exist when BellSouth processes a significant number of competing carriers' orders manually.⁸⁴ Although we noted in the *Ameritech Michigan Order* and *BellSouth South Carolina Order* that there may be limited instances in which it is appropriate for a BOC to intervene manually, we also found that excessive reliance on manual processing, especially for routine transactions, impedes the BOC's ability to provide equivalent access to these fundamental operational support systems.⁸⁵ The disparity in order flow-through rates is of particular concern here because the rejections are occurring for routine transactions -- resale orders for simple "plain old telephone service" (POTS), which should be among the easiest orders to submit and process.⁸⁶

26. The delays in manually processing orders that "drop out" from BellSouth's electronic OSS are aggravated by the poor performance of BellSouth's service centers and the lack of electronic order rejection notices. First, evidence on the record indicates that BellSouth's service centers were inefficient and had inadequately trained employees, raising

⁸² Stacy OSS Aff. at para. 75; LCI Comments at 5; BellSouth Stacy Reply OSS Aff. at para. 53. BellSouth has established two service centers that serve as central contact points for new entrants for pre-ordering, ordering, and provisioning of resale services and network elements. BellSouth Stacy Perf. Aff. at para. 4. Each competing carrier is assigned to one of the two service centers. *Id.* Each competing carrier is assigned to a customer support manager at one of the service centers who acts as a single point of contact for any "operational issues that are not satisfactorily resolved by the normal center process." *Id.* The service centers will accept "manual orders" via facsimile, telephone, or mail requests from those competing carriers that do not want to implement BellSouth's "electronic" operational support systems for pre-ordering, ordering, and provisioning. *BellSouth South Carolina Order* at para. 90. The service centers also handle manual processing of orders for services not supported by the electronic interfaces. In addition, if there is an error in the processing of an order, even when using BellSouth's electronic OSS, the service centers either manually process the order or notify the new entrant of the error, via facsimile or telephone. *Id.*

⁸³ *Ameritech Michigan Order* at para. 196; *BellSouth South Carolina Order* at para. 107.

⁸⁴ *Ameritech Michigan Order* at para. 196; *BellSouth South Carolina Order* at para. 107.

⁸⁵ *Ameritech Michigan Order* at para. 178; *BellSouth South Carolina Order* at para. 107; but see Bell Atlantic Reply Comments at 4-5.

⁸⁶ See *Ameritech Michigan Order* at para. 173; *BellSouth South Carolina Order* at para. 105. According to AT&T, the current EDI interface provided by BellSouth provides the capability to order only business and residential POTS. AT&T Comments, App. B, Vol. I, Affidavit of Jay M. Bradbury (AT&T Bradbury Aff.) at para. 116.

operating costs and contributing to delays in customer service.⁸⁷ The problems at the service centers resulted in rejected orders being returned to AT&T and MCI "an average of 1.7 times -- meaning that, on average, local service requests were being returned almost twice to the two [competing carriers] before the order was finally processed."⁸⁸ In its reply comments BellSouth responds to service center complaints by submitting a one-page letter from an outside consulting firm noting that BellSouth's service center performance has improved and that the service centers are operationally ready.⁸⁹ While we are encouraged by these statements, we agree with AT&T that BellSouth supplies no supporting data or reports to verify these claims.⁹⁰

27. Second, BellSouth does not electronically notify competing carriers that an order has been rejected. Service center personnel either send an error notice to the competing carrier via facsimile or they undertake to resolve the problem and resubmit the order, causing further delay in the processing of these orders.⁹¹ We agree with competing carriers that prompt notification of order rejections is important so that competing carriers may make the necessary corrections and avoid further delay in processing an order.⁹² BellSouth's failure to return order rejections promptly is compounded by the fact that a competing carrier must manually input these notices into its own OSS before it can respond to them.⁹³ Moreover,

⁸⁷ AT&T Bradbury Aff. at paras. 243-247; ACSI Comments at 37-44; LCI Comments at 6; LCI Witbrodt Decl. at para. 6; LCI Comments, Decl. 3, Declaration of Beth Rausch (LCI Rausch Decl.) at para. 11. Both AT&T and ACSI point to a study conducted by the consulting firm of DeWolff, Boberg & Associates. AT&T Bradbury Aff. at paras. 243-247; ACSI Comments at 37-44; ACSI Comments, Ex. 4, "Analysis Conducted for BellSouth - LCSC, Atlanta, GA - Birmingham, AL, March 3, 1977 - March 13, 1997" (DeWolff Audit). The DeWolff Audit found that: (1) the service centers' basic work processes "lack process documentation, compliance, and the accuracy to provide a predictable high quality output;" (2) the "current level of quality is unnecessarily low. Due to numerous operating problems, training deficiencies and process non-compliance, this level of quality is inflating [the service centers'] operating costs per order, and contributing to delays in customer service;" (3) the "current level of labor utilization is inflating [service center] operating costs, and building excessive lead-times into [service centers'] order process;" (4) different employees were using different methods to perform the same task, impacting customer service and unnecessarily inflating order processing time; (5) employees were trained ineffectively; and, (6) there was a "passive management style" resulting from "a lack of an effective management operating system." ACSI Comments, Ex. 4, DeWolff Audit at 002773, 002790, 002797, 002773, 002772.

⁸⁸ AT&T Bradbury Aff. at para. 244; ACSI Comments at 43.

⁸⁹ BellSouth Stacy Reply OSS Aff. at para. 77; Ex. WNS-5.

⁹⁰ AT&T Bradbury Aff. at para. 247.

⁹¹ *BellSouth South Carolina Order* at para. 106; see MCI Comments at 15-17; MCI Comments, Ex. D, Declaration of Samuel L. King (MCI King Decl.) at paras. 132-34.

⁹² AT&T Bradbury Aff. at para. 231; MCI Comments at 15-16.

⁹³ AT&T Bradbury Aff. at para. 120; MCI King Decl. at para. 133.

BellSouth's manual rejection notices do not "readily communicate" the cause for rejection of the order and sometimes require competing carriers to contact BellSouth for clarification.⁹⁴ By contrast, the on-line edits in BellSouth's own systems instantaneously advise BellSouth representatives of any errors and prevent them from releasing orders until the errors have been corrected.⁹⁵ This lack of prompt notification of order rejections aggravates the disparity between order flow-through rates.

28. We find that the substantial disparity between the flow-through rates of BellSouth's orders and those of competing carriers, on its face, indicates that BellSouth is not providing competing carriers with nondiscriminatory access to its OSS.⁹⁶ Commenters' claims of poor service by BellSouth's service centers,⁹⁷ and BellSouth's failure to provide any data on the processing of manual orders,⁹⁸ further support our conclusion that BellSouth is not providing parity in the processing of orders.⁹⁹ Under such circumstances, the customer is likely to view the competing carrier as slow, inefficient, or unreliable when compared to the BOC, even if the competing carrier is not at fault.

29. The record does not support BellSouth's claim that the low flow-through rates are caused primarily by new entrants making mistakes on the orders they submit.¹⁰⁰ BellSouth made the same argument in its South Carolina application. We rejected this claim in the

⁹⁴ AT&T Bradbury Aff. at para. 124; MCI King Decl. at para. 133.

⁹⁵ AT&T Bradbury Aff. at para. 232; MCI King Decl. at para. 132.

⁹⁶ See *supra* paras. 24-25.

⁹⁷ See *supra* para. 26.

⁹⁸ See *infra* Section IV.A.2.a.iii. BellSouth's measurements fail to take into account the interval between when a competing carrier submits an order and the order flows through BellSouth's Service Order Control System (SOCS). (For a description of SOCS, see *infra* note 151.) Given the number of order rejections, and the fact that such rejections require manual intervention, the efficiency of BellSouth's service centers is critical. BellSouth's failure to provide measures that cover these intervals makes it impossible for us to compare BellSouth's ordering/provisioning of its retail customers and the ordering/provisioning of competing carriers, and therefore impossible for us to conclude that BellSouth has shown that it provides nondiscriminatory access. Such comparisons must be made to ensure that a competing carrier can provide service to its customers in substantially the same time and manner that the BOC provides service to its own retail customers. See *infra* Section IV.A.2.a.iii.

⁹⁹ See *Ameritech Michigan Order* at para. 196; *BellSouth South Carolina Order* at para. 107; see *Florida Commission, Consideration of BellSouth Telecommunications, Inc.'s Entry into InterLATA Services Pursuant to Section 271 of the Federal Telecommunications Act of 1996*, Docket No. 960786-TL, Order No. PSC-97-1459-FOF-TL (Nov. 19, 1997) (*Florida Commission Section 271 Order*) at 98.

¹⁰⁰ See *BellSouth Stacy OSS Aff.* at para. 112; *BellSouth Reply Comments, App.*, Tab 12, Affidavit of William N. Stacy (*BellSouth Stacy Reply Perf. Aff.*) at para. 23.

BellSouth South Carolina Order because the record there did not support these claims.¹⁰¹ Specifically, we could not determine how many of the errors assigned by BellSouth to the actions of competing carriers resulted from BellSouth's failure to provide information, such as business rules, concerning how BellSouth's internal systems process orders.¹⁰² Given the lack of evidence presented by BellSouth, we find no reason to alter our prior conclusion that BellSouth has not met its burden of establishing that it is providing nondiscriminatory access, because it has failed to demonstrate that competing carriers are to blame for the high order rejection rates. In reaching this decision, we are not suggesting that BellSouth is responsible if the quality of work performed by the competing carrier's workforce is, indeed, inferior. BellSouth, however, has failed to provide us with such information and, therefore, it has failed to substantiate its claim that competing carriers are to blame for the low order flow-through rate.¹⁰³

(ii) Failure to Provide Order Status Notices to Competing Providers in Substantially the Same Time and Manner

30. We conclude here, as we did in the *BellSouth South Carolina Order*, that BellSouth fails to provide competitors with information about the status of their orders in substantially the same time and manner as it provides such order status notices to itself.¹⁰⁴

¹⁰¹ *BellSouth South Carolina Order* at para. 108.

¹⁰² *Id.* at para. 110. Business rules refer to the protocols that a BOC uses to ensure uniformity in the format of orders. *Id.* These protocols define valid relationships in the creation and processing of orders, as well as other interactions involved in the BOC's provision of OSS functions. *Ameritech Michigan Order* at para. 137, n.33; *BellSouth South Carolina Order* at para. 110, n.333. In both the *Ameritech Michigan* and *BellSouth South Carolina Orders*, we established that BOCs have an affirmative obligation to provide such information and support to competing carriers. *Ameritech Michigan Order* at para. 137; *BellSouth South Carolina Order* at para. 111.

¹⁰³ AT&T Bradbury Aff. at paras. 234-36; see AT&T Pfau Aff. at paras. 66-67. BellSouth's alleged "analysis" of orders purportedly shows that errors caused by competing carriers "represented 50%, 87%, and 82% of the total errors [for July, August, and September] respectively." Stacy OSS Aff. at para. 112; see Stacy OSS Aff., Ex. WNS-41. In its reply comments, BellSouth restates its argument attributing blame to competing carriers. BellSouth Stacy Reply Perf. Aff. at para. 23. Again, BellSouth does not provide any support for its assertion. BellSouth does not provide any description of the analysis it used to make its determinations, *i.e.*, BellSouth does not describe its "SOER error analysis." AT&T Bradbury Aff. at para. 234. Nor does BellSouth explain what it means by "CLEC-caused input errors." *Id.*; see Stacy OSS Aff., Ex. WNS-41. Finally, BellSouth does not offer any basis for its conclusion that, if competing carriers' errors were eliminated, the projected flow-through rates would improve to the percentages it suggests. AT&T Bradbury Aff. at para. 234. AT&T asserts that such "'CLEC-caused errors' may well be the fault of BellSouth itself. . . . AT&T's own experience has shown that a number of AT&T orders were rejected for errors because BellSouth had not provided AT&T with the business rules necessary to avoid such errors." AT&T Bradbury Aff. at para. 236.

¹⁰⁴ Order status notices include, at a minimum, order receipt, order rejection, firm order confirmation, order jeopardy, and order completion notices. *BellSouth South Carolina Order* at para. 115, n.347.

We agree with commenters that order status notices have a direct impact on a new entrant's ability to serve its customers, because they allow competing carriers to monitor the status of their resale orders and to track the orders both for their customers and their own records.¹⁰⁵ If competing carriers are not informed of changes to an order or that a due date is in jeopardy, the customer is likely to blame the competing carrier for the delay, even if the competing carrier is completely without fault.¹⁰⁶ To the customer, the new entrant may appear to be a less efficient and responsive service provider than its competitor, BellSouth. Thus, we find that, in order for a competing carrier to compete through the use of resale services, it must receive information concerning the status of its customers' orders in substantially the same time and manner as the BOC provides such information to its retail operations.¹⁰⁷

31. In the *BellSouth South Carolina Order*, we found that BellSouth failed to provide order error and rejection notices, firm order commitment notices, and order jeopardy notices in substantially the same time and manner as BellSouth provides to its retail operations.¹⁰⁸ Order rejection notices inform the competing carrier that there is a problem with its order that prevents the order from being processed. BellSouth's firm order commitment notices inform the competing carrier that BellSouth has accepted the order and provide the due date for installation of service. Order jeopardy notices inform the competing carrier that BellSouth will not be able to complete installation on or before the scheduled due date.¹⁰⁹

32. Order Error and Rejection Notices. Timely delivery of order rejection notices directly affects a competing carrier's ability to serve its customers, because new entrants cannot correct errors and resubmit orders until they are notified by BellSouth that the order contains an error.¹¹⁰ Currently, rejected orders¹¹¹ are reviewed for errors by a BellSouth

¹⁰⁵ MCI Comments at 15-19; MCI King Decl. at paras. 133-35; see AT&T Pfau Aff. at para. 38.

¹⁰⁶ *BellSouth South Carolina Order* at para. 115.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at paras. 115-31.

¹⁰⁹ See *id.* at para. 130.

¹¹⁰ AT&T Comments Bradbury Aff. at para. 231; AT&T Pfau Aff. at para. 45; MCI King Decl. at paras. 133-35; see *BellSouth South Carolina Order* at para. 117.

¹¹¹ See *supra* note 78.

service center employee and then a written error rejection notice is sent to the competing carrier via facsimile.¹¹²

33. The evidence in the record indicates that there are two problems with BellSouth's manual notification of order rejection notices.¹¹³ First, BellSouth does not provide competing carriers with order rejection notices in a timely fashion. AT&T has submitted data showing that BellSouth provided AT&T with order rejection notices within one hour of order submission only six percent of the time.¹¹⁴ BellSouth has not supplied us with data indicating how long it takes to supply itself with the equivalent of an order rejection notice.¹¹⁵ Other evidence, however, indicates that BellSouth's retail operations receive the equivalent of an error notice between a few seconds and thirty minutes after entering an order.¹¹⁶ Because BellSouth has not provided the Commission with information on how long it takes its own representatives to receive notices of errors, we cannot determine whether BellSouth is providing order rejection notices to competing carriers at parity to that which it provides to itself.¹¹⁷ We are concerned, however, that BellSouth consistently continues to fail to meet the standard identified in its interconnection agreement with AT&T, which obligates BellSouth to use its best efforts to notify AT&T of errors within one hour of receipt.¹¹⁸

34. Second, the manual return of order rejection notices creates additional delay in the ordering process because competing carriers must monitor facsimile machines to receive

¹¹² *BellSouth South Carolina Order* at para. 117 (citing BellSouth South Carolina Application, App. A, Vol. 4a, Tab 12, Affidavit of William N. Stacy at paras. 75-77). Although Mr. Stacy's affidavits in support of BellSouth's South Carolina and Louisiana applications are quite similar, Mr. Stacy's Louisiana affidavit omits any discussion on the manual processing of order reject errors.

¹¹³ According to BellSouth, "EDI orders rejected by the EDI translator are rejected electronically Orders rejected by subsequent systems are handled manually." BellSouth Stacy Reply OSS Aff. at para. 52; *but see* AT&T Bradbury Aff. at para. 122. Therefore, this discussion is limited to those orders that "cross" the EDI interface and are rejected by one of BellSouth's systems on the other side of the EDI interface.

¹¹⁴ AT&T Bradbury Aff. at para. 232; Att. 42.

¹¹⁵ We also note that BellSouth has once again failed to provide data on the provisioning of order rejection notices to competing carriers. AT&T Pfau Aff. at para. 20.

¹¹⁶ *Florida Commission Section 271 Order* at 161-62.

¹¹⁷ If a BOC performs an analogous activity for its retail operations, it needs to provide comparative information in its application to demonstrate its compliance with the nondiscriminatory standard in the Act. *BellSouth South Carolina Order* at para. 118.

¹¹⁸ AT&T Bradbury Aff. at para. 231.

such notices, and must then route the order rejection notices to appropriate personnel.¹¹⁹ By contrast, BellSouth need not resort to these procedures when an order is rejected, because its systems provide on-line edits that inform the BellSouth service representative of the error so that the representative can correct the problem immediately.¹²⁰ As a result, approximately 97 percent of BellSouth's residential orders and 81 percent of its business orders electronically flow through its back office systems.¹²¹ Competing carriers argue that problems related to manual return of order rejection notices are compounded by the fact that BellSouth's manual order rejections do not contain codes that clearly identify the errors, which requires competing carriers to take time either to interpret the notice or to contact BellSouth service center employees.¹²² Therefore, as we concluded in the *BellSouth South Carolina Order*, BellSouth's manual provision of order rejection notices to competing carriers via facsimile is not equivalent to the access that BellSouth provides its retail operations.¹²³

35. Firm Order Confirmation Notices. Timely return of a firm order confirmation or FOC notice is critical because it provides the competing carrier with the status of its order by (1) confirming that the order has been accepted, and (2) providing the due date for installation.¹²⁴ Providing the due date for installation is significant because, as discussed below, the ability of new entrants to obtain due dates from BellSouth's pre-ordering system is highly constrained.¹²⁵ Thus, the first opportunity that competing carriers may have to inform their customers of the due date is when the firm order confirmation notice is returned. Prompt notification is important, because competing carriers need to inform their customers, who in turn may need to make special arrangements to accommodate installation.¹²⁶ If competing carriers are not able to inform their customers of due dates in a timely manner, customers are likely to conclude that service provided by competing carriers is inferior to service provided by the BOC.

¹¹⁹ AT&T Bradbury Aff. at paras. 120, 124; MCI King Decl. at para. 133 (MCI also notes that this problem will get worse and "is likely to result in substantial delays" as the volume of orders increases).

¹²⁰ AT&T Bradbury Aff. at para. 232.

¹²¹ See *supra* note 78 and accompanying text.

¹²² AT&T Bradbury Aff. at para. 124; MCI King Decl. at para. 133.

¹²³ *Ameritech Michigan Order* at para. 137 (stating that, if a BOC provides itself with an electronic interface as a means to obtain access to a particular OSS function, it must provide equivalent electronic access for competing carriers); *BellSouth South Carolina Order* at para. 120; see *Local Competition Order*, 11 FCC Rcd at 15766-67; *Local Competition Second Reconsideration Order*, 11 FCC Rcd at 19739.

¹²⁴ *BellSouth South Carolina Order* at para. 122. LCI Comments at 4; LCI Rausch Decl. at para. 5; KMC Comments, Att. 4, Declaration of Lynn W. Davis at para. 5.

¹²⁵ See *infra* Section IV.A.2.b.ii.; see also *BellSouth South Carolina Order* at paras. 122, 167-69.

¹²⁶ See *infra* Section IV.A.2.b.ii.; see also *BellSouth South Carolina Order* at paras. 167-69.

36. In the *Ameritech Michigan Order* and *BellSouth South Carolina Order*, the Commission stated that BOCs are required to include data on the timeliness of their delivery of firm order confirmation notices to competing carriers.¹²⁷ BellSouth's application does not provide such data, nor does it indicate how long it takes to provide the equivalent information to its retail operations.¹²⁸ In its reply comments, BellSouth presents two weeks of data for two carriers.¹²⁹ Some of the data relate to BellSouth activity after the date of its application. Evidence that concerns BellSouth's post-application performance is not demonstrative of its performance at the time of the application.¹³⁰ Therefore, we give this evidence no weight. Furthermore, even if we were to consider the evidence, we would not find the data to be persuasive. Instead of providing evidence of BellSouth's performance for numerous carriers consistently over a specified period of time, BellSouth provides only selected weeks' data on its performance for two carriers.¹³¹ We find that providing performance data pertaining to particular carriers in particular weeks does not demonstrate overall performance.

37. Several commenters, however, provide data on how long it takes BellSouth to provide firm order confirmation notices to them.¹³² AT&T submits evidence showing that BellSouth took longer than 24 hours to return a firm order confirmation notice for 38 percent of its August 1997 orders and 44 percent of its September 1997 orders.¹³³ LCI claims that it

¹²⁷ *Ameritech Michigan Order* at para. 187; *BellSouth South Carolina Order* at para. 123.

¹²⁸ AT&T Pfau Aff. at paras. 20, 42; ACSI Reply Comments at 16. In the *Ameritech Michigan Order*, the Commission concluded that the retail analogue of a firm order confirmation notice occurs when an order placed by the BOC's retail operations is recognized as valid by its internal OSS. The Commission concluded that the BOC needs to provide firm order confirmation notices to competing carriers in substantially the same time that its retail operations receive the retail analogue. *Ameritech Michigan Order* at para. 187, n.479; *BellSouth South Carolina Order* at para. 122. KMC claims that BellSouth service representatives receive a firm order confirmation notice within a matter of minutes. KMC Comments, Att. 3, Declaration of Larry Miller at para. 13.

¹²⁹ BellSouth Stacy Reply OSS Aff. at para. 62.

¹³⁰ *BellSouth South Carolina Order* at para. 128.

¹³¹ See BellSouth Stacy Reply OSS Aff. at para. 62.

¹³² BellSouth claims that competing carriers who have experienced longer delays in receiving firm order confirmation notices "are likely formatting their requests incorrectly . . . [and] that those [competing carriers] who are experiencing high error rates must bear responsibility for those mistakes." BellSouth Reply Comments at 50. We stated in the *BellSouth South Carolina Order*, however, that competing carrier orders that are truly in error should receive timely order rejection notices, not untimely firm order confirmation notices. *BellSouth South Carolina Order* at para. 128. We reiterate that BellSouth has not provided evidence or explanation to support its contention that most errors in the ordering process are caused by new entrants. See *supra* Section IV.A.2.a.i.; see also *BellSouth South Carolina Order* at paras. 108-14.

¹³³ AT&T Bradbury Aff. at para. 227, Pfau Aff. at paras. 40-41. Pursuant to its interconnection agreement with AT&T, BellSouth must return firm order confirmation notices to AT&T within twenty-four hours. AT&T Bradbury Aff. at para. 226. AT&T notes that BellSouth's "poor performance occurred despite the fact that

received only 20 percent of its firm order confirmation notices from BellSouth within 24 hours of submitting an order and that, on average, it has taken 3.5 workdays from submission of an order to receive a firm order confirmation notice.¹³⁴

38. Therefore, as in the *BellSouth South Carolina Order*, we conclude that, because BellSouth has not provided any data that compares its delivery of firm order confirmation notices to competing carriers to delivery of equivalent notices to its own retail operations for its own orders, BellSouth has failed to demonstrate that it is providing nondiscriminatory access and therefore we cannot conclude that it has met the competitive checklist. We also conclude, based on the evidence submitted by AT&T and LCI, that BellSouth is not providing competing carriers with firm order confirmation notices on a timely basis.¹³⁵ Our decision is based on the fact that BellSouth consistently fails to meet the standard identified in its interconnection agreement.¹³⁶

39. Order Jeopardy Notices. As stated above, order jeopardy notices inform the competing carrier that BellSouth will not be able to complete installation on or before the scheduled due date. It is critical that a BOC provide a competing carrier with timely notice if the BOC, for any reason, can no longer meet the scheduled due date, so that the competing carrier can inform its customer of the delay before it occurs and reschedule the time for service installation.¹³⁷ The alternative would be that the scheduled due date is not met and the customer discovers this after the fact. Evidence in the record shows that BellSouth provides competing carriers with notice of those order jeopardies caused by the competing carrier or its customer, but not for delays caused by BellSouth.¹³⁸ Thus, as we found in the *BellSouth South Carolina Order*, because BellSouth is not providing order jeopardy notices for those

BellSouth has unilaterally limited its FOC measure to only those 'orders that flow through mechanically and entirely without human intervention' . . . thereby excluding from its FOC measurement those [competing carrier] orders most likely not to meet the contractual standard." AT&T Comments at 52-53; see AT&T Pfau Aff. at para. 44; BellSouth Stacy Perf. Aff., Ex. WNS-3 at 2; BellSouth Stacy Reply Perf. Aff. at para. 27.

¹³⁴ LCI Comments at 4; LCI Rausch Decl. at para. 7, Ex. B. LCI claims that its data are only for those orders for which it received a firm order confirmation notice. LCI Rausch Decl. at para. 7. According to LCI, on approximately 38 percent of its orders, BellSouth has not provided a firm order confirmation notice via the EDI ordering interface. *Id.* We note that these figures represent an improvement over those LCI submitted in response to BellSouth's South Carolina application, where LCI claimed that only ten percent of its orders received firm order confirmation notices within twenty-four hours. See *BellSouth South Carolina Order* at para. 124.

¹³⁵ See *supra* para. 37; see also *BellSouth South Carolina Order* at para. 126.

¹³⁶ See *supra* note 133 and accompanying text.

¹³⁷ *BellSouth South Carolina Order* at para. 130; see, e.g., MCI Comments at 17-19; MCI King Decl. at para. 139; AT&T Pfau Aff. at 49; AT&T Bradbury Aff. at paras. 119-21.

¹³⁸ AT&T Bradbury Aff. at para. 121; MCI King Decl. at paras. 137-39.